IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 11945 of 2004

AND

WRIT PETITION No.3651 OF 2005

Between:

1 Director General (Posts), Govt. of India, New Delhi
2 Director of Postal Services Hyderabad City Region, Hyderabad-1
3 Sr.Superintendent Mail Service, (S.S.R.M.S)
Hyderabad Sorting Division Hyderabad.
4 Manager Mail Motor Service, Hyderabad-95.

..... PETITIONERS

AND

S.S. Zama S/o. Syed Qiamruj Zama
O/o The Manager MMS, Koti Hyderabad-95.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or Certiorari or any other appropriate writ, order or direction, calling for the records pertaining to O.A.No.942/2001 dt. 30-1-2004 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void ab initio, null and void and nonest in the eye of law and pass.

Counsel for the Petitioner:MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR

GEN.)

Counsel for the Respondent .: MR.B.S.A.SATYANARAYANA

WRIT PETITION NO : 3651 of 2005

Between:

1. The Union of India, Rep by its Chairman,
Board of Postal Services, Ministry of Communication, Department of Posts,

New Delhi - 110 001.

2. The Director of Postal Services, Hyderabad City Region,
O/o. Chief Post Master General, Dak Sadan, Abids, Hyderabad.

3 The Manager, Mail Motor Services(Postal) Kothi, Hyderabad - 500 095.

..... PETITIONERS

AND

P. Shivaram, S/o. Ashaiah,
Grade-II, O/o. Manager Mail Motor Services (Postal) Kothi, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue preferably a writ in the nature of certiorari or any appropriate writ, order or direction, calling for the records pertaining to OA No. 124 of 2003, dt. 30-1-2004 on the file of Hon'ble Administrative Tribunal, Hyderabad Bench, Hyderabad, and quash sthe same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void abinitio, null and void and nonest in the law, and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case

Counsel for the Petitioner:MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

Counsel for the Respondent : MR.B.S.A.SATYANARAYANA

The Court made the following :

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COMMON ORDER: **(Per the Hon'ble Sri Justice G.Bikshapathy)**

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Both these writ petitions can be disposed of together as the issue involved in both the petitions is one and the same.

2. Writ Petition 11945 of 2004 is filed by the petitioners challenging the order dated 30-1-2004 in O.A.No.942 of 2001 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad and Writ Petition 3651 of 2005 is filed by the petitioners assailing the order dated 30-1-2004 in O.A.No.124 of 2003 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

3. The only issue that arises for consideration is as to when a charge was for major misconduct and ultimately a minor punishment is inflicted, how the period from the date of removal till the date of reinstatement be treated.

4. In the instant case, the employees were issued with a charge sheet for major misconduct and ultimately they were dismissed from service. Challenging the dismissal they filed O.As. The Tribunal, however set aside the orders of disciplinary authority and directed the authority to reconsider the punishment. In pursuance of the direction of the Tribunal, the matter was reconsidered and punishment of deferment of one increment without cumulative effect was awarded and the period from date of dismissal till the date of reinstatement was treated as on duty with 50% wages. Assailing the said order in so far as it relates the treatment of the period between the dismissal and reinstatement, the employees filed O.As. The Tribunal however allowed the O.As. holding that the applicant is entitled for full wages for the period referred to above. The Tribunal relied on the order issued by the Government in O.A.No.43/56/64-AVD, dated 22-10-1964 which reads as follows:

> *(3) Period of suspension to be treated as duty if minor penalty only is imposed- Reference isinvited to O.M.No.43/56/64-AVD, dated 22-10-1964 {not printed}, containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R.54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R.54-B."*

5. Assailing the said order, the present writ petitions are filed by the Department.

6. The learned Standing Counsel appearing for petitioners submits that the order of Tribunal is contrary to law and under Rule 54 it is open for the Disciplinary Authority to treat the period from the date of dismissal till the date of reinstatement in accordance with the provisions contained therein. Therefore, by invoking the said provision, the authority treated the period as on duty with 50% wages. The Tribunal ought not have interfered with the order of the Disciplinary Authority.

7. We are afraid, we cannot accept the contention of the learned counsel for the petitioners. Once an employee is reinstated, the period in between the date of removal and reinstatement is governed by F.R.54 (B). The F.R. clearly stated that the employee concerned should be paid full pay and allowances as per F.R. No. 54(B).

8. Under these circumstances, we do not find any flaw in the order of the Tribunal.

9. Accordingly the writ petitions are dismissed. No order as to costs.

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G.Bikshapathy,J.

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P.S.Narayana, J.

4th April, 2005.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Director General (Posts), Govt. of India, New Delhi
2 Director of Postal Services Hyderabad City Region, Hyderabad-1
3 Sr.Superintendent Mail Service, (S.S.R.M.S)
Hyderabad Sorting Division Hyderabad.
4 Manager Mail Motor Service, Hyderabad-95.

5 2 CD copies

6 1 CC to MR.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITION NO : 11945 of 2004

ANDs

WRIT PETITION No.3651 OF 2005

Common Order

4th April, 2005